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# In the Supreme Court of the United States

OCTOBER TERM, 1968

No. 262

JOSEPH NAPLES,

*Petitioner,*

vs.

E. L. MAXWELL,
Warden, Ohio State Penitentiary,
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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## TABLE OF CONTENTS.


Opinions Below ..... 1

Jurisdiction ..... 2

Question Presented ..... 2

Constitutional Provision ..... 2

Statutes Involved ..... 2

Statement ..... 3

Reasons for Granting the Writ ..... 5

Conclusion ..... 7

Appendix:

- Opinion and Order of the District Court of the United States for the Southern District of Ohio, Eastern Division ..... 8
- Opinion of the United States Court of Appeals for the Sixth Circuit ..... 18
- Judgment of the United States Court of Appeals for the Sixth Circuit ..... 24
- Order of the United States Court of Appeals for the Sixth Circuit Denying Rehearing ..... 25
- Statutes ..... 25
- Affidavit for Search Warrant ..... 27

## TABLE OF AUTHORITIES.

### Cases.


*Aguilar v. United States*, 378 U. S. 108 ..... 6

*Giordenello v. United States*, 357 U. S. 480 ..... 5

*Nathanson v. United States*, 290 U. S. 41 ..... 6

*Rugendorf v. United States*, 376 U. S. 528 ..... 7

*Sanford v. Texas*, 379 U. S. 476 ..... 7

*State v. Lindway*, 131 O. S. 166 ..... 4

*United States v. Venbresca*, 380 U. S. 102 ..... 7


### Constitution.


Constitution of the United States:

Amendment IV ..... 2, 7

Amendment XIV ..... 7


### Statutes.


Ohio Revised Code:

Sec. 2907.30 ..... 2, 3, 25

Sec. 2915.13 ..... 2, 3, 25

28 U. S. C. 1254(1) ..... 2

28 U. S. C. 2254 ..... 2, 26

# In the Supreme Court of the United States

**OCTOBER TERM, 1967.**

**No. _____.**

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E. L. MAXWELL,
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## PETITION FOR A WRIT OF CERTIORARI
## To the United States Court of Appeals For the Sixth Circuit.

Petitioner, Joseph Naples, respectfully prays that a writ of certiorari issue to review the decision and judgment of the United States Court of Appeals for the Sixth Circuit entered on April 19, 1968, reversing the judgment of the District Court of the United States for the Southern District of Ohio, Eastern Division.

## OPINIONS BELOW.

The opinion of the Circuit Court of Appeals for the Sixth Circuit had not yet been reported, but a copy of said opinion is set forth in Appendix, pages 18-24. The judgment of the Circuit Court of Appeals is printed in the Appendix, page 24. Order denying petition for rehearing is printed in the Appendix, page 25. The opinion and order of judgment of the District Court of the United States for the Southern District of Ohio, Eastern Division, is printed in the Appendix, pages 8-17.

## JURISDICTION.

The judgment of the Circuit Court of Appeals for the Sixth Circuit was entered on April 19, 1968, Appendix, page 24. Petition for rehearing was denied on May 16, 1968, Appendix, page 25. The jurisdiction of the Court is invoked under 28 U. S. C., Section 1254(1).

## QUESTION PRESENTED.

Whether a search warrant for a dwelling was defective when the affidavit in support of it contained no affirmative allegation of personal knowledge or affirmative allegation that informant spoke with personal knowledge.

## CONSTITUTIONAL PROVISION.

AMENDMENT IV:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

## STATUTES INVOLVED.

Ohio Revised Code, Section 2915.13—Promoting a "Numbers Game"; Ohio Revised Code, Section 2907.30—Receiving Stolen Property; Title 28, United States Code, Section 2254; see Appendix beginning at page 25.

## STATEMENT.

Petitioner, Joseph Naples, was charged in two separate indictments, one with backing a numbers game in violation of Ohio Revised Code Section 2915.13, and the second with receiving stolen property in violation of Ohio Revised Code, Section 2907.30. Separate trial juries found petitioner guilty. The sentences to be served concurrently were respectively, one to ten years and a fine of Five Hundred Dollars ($500.00), and one to seven years, plus costs, in both cases. The judgments of conviction were affirmed by the Court of Appeals for the Seventh Judicial District of Ohio, and the Supreme Court of Ohio dismissed the appeals. *State of Ohio v. Naples*, 175 O. S. 550. A habeas corpus writ was filed in the District Court of the United States for the Southern District of Ohio, Eastern Division. The original writ was granted on a statement of an assistant Ohio attorney general. The Circuit Court of Appeals for the Sixth Circuit reversed the decision, sufficiency of the affidavit not being determined. 368 F. 2nd 219 (6th Cir.), cert. denied 386 U. S. 971. A hearing was then had before the District Court. The writ was again granted, Appendix, page 17. The United States Court of Appeals for the Sixth Circuit reversed, Appendix, page 24.

On July 24, 1962, at approximately 11:00 A.M., two Youngstown, Ohio, detectives, after a conversation with police Lieutenant Carney, Detective Brace, one of the detectives, typed an affidavit and a search warrant. The affidavit in support of the warrant contained no statement of facts but merely the conclusion that certain items were being unlawfully kept in the premises to be searched. It stated in the middle of paragraph five of the affidavit: "This affidavit is based on facts as follows: that affiant has received information which he believes to be reliable and true that the above named items, or a part thereof, are